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"within five days after the delivery of the goods to the vendee," taken in connection with the words "until and except" which precede it. It would seem extremely improbable that the legislative intent was to prevent the class of sales and contracts under consideration from ever afterwards being recorded as to lien creditors and subsequent purchasers for value without notice, simply because the transaction was not filed for docketing within five days after the vendee had obtained possession of the property. Yet if the phrase in controversy is to be given any interpretation whatsoever and not totally disregarded this would appear to be the only possible meaning from a grammatical standpoint. Such a construction would not only work a serious injustice to vendors but would likewise run counter to the very theory of the title or lien which the statute was originally designed to protect. Until rights adverse to those of the vendor have been acquired, it is hard to understand why his rights can be forever nullified as to all potential adverse claimants of a proper kind that may appear in the future, while the title or lien still remains valid as to the vendee. Omitting the phrase entirely would still leave the sense of the clause complete and in close accordance with the previous provision of the Acts of 1919. Unquestionably it seems that if any five day period was meant to be inserted it was for the purpose of giving the vendor a brief period of grace in which to record his sale or contract. If this be the meaning intended, it is obscured in the rather confused rhetoric of the section as it stands. Upon search being made, no five day period has been discovered in connection with the transactions under observation in previous statutes. It is to be earnestly hoped that the apparent ambiguity which exists on the face of the present statute will be clarified at the next session of the General Assembly.

M. T. S.

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DIVORCE—REMARRIAGE OF SAME PARTIES—VA. CODE, 1919, § 5113.—The Virginia Code of 1919, § 5113, provides as follows: "On the dissolution of the bond of matrimony \* \* \* neither party shall be permitted to marry again for six months from the date of such decree, and such bond of matrimony shall not be deemed to be dissolved as to any marriage subsequent to such decree \* \* \* until the expiration of such six months."

This section of the Code is new and no case has as yet been decided by the Court of Appeals under it. However, there are similar statutes in a good many States. These are not penal statutes for they apply to the innocent as well as the guilty, but were passed in order to discourage divorces. They are based on grounds of public policy, viz., that it is bad for society that divorced parties should be immediately able to contract new marriages.<sup>1</sup>

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<sup>1</sup> *Lanham v. Lanham*, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804, 128 Am. St. Rep. 1085; *Wilson v. Cook*, 256 Ill. 460, 100 N. E. 222.

When, as in Virginia, the statute prohibits both parties from remarrying, applying to both innocent and guilty alike, it is usually held that the prohibition goes directly to the ability or capacity of the parties to contract marriage, and consequently a marriage is held void in the domiciliary State even though performed in another State.<sup>2</sup> In these cases the marriage relation is not absolutely terminated, but is held in suspension during the period provided by statute. Moreover, the purpose of the statute, which is to prevent an early remarriage after the securing of the divorce, would be defeated if such marriages were considered valid.

But what would be the effect, in Virginia, if before the expiration of the six months the divorced parties should remarry each other? In Massachusetts, under a statute prohibiting the guilty party from remarrying within two years, it was held that the statute did not apply to a reunion of the divorced couple.<sup>3</sup> The decision was based upon a technical implication from the statute, and also on the further ground that the remarriage was a condonation of the offense by the innocent party, and that such a forgiveness should not be prohibited. In an Oklahoma case, under a statute prohibiting "either party to a divorce to marry any other person within six months, etc.", it was held that the parties to the divorce may remarry.<sup>4</sup> This case was put on the ground that the insertion of the words "any other person" in the statute showed an evident intent upon the part of the lawmakers to allow for such a reconciliation. However, the cases just cited arose under statutes that are not similar to the corresponding section of the Virginia Code.<sup>5</sup>

The clause that "such bond of matrimony shall not be deemed dissolved as to any marriage subsequent to such decree \* \* \* until the expiration of \* \* \* six months" seems to be peculiar to the Virginia statute. Consequently, where the parties remarry, the first marriage in reality is not dissolved until six months after the entering of the decree, and during this time it must be in full force. Since this marriage is still in full force, any subsequent marriage within the six months period, whether to a third person or a remarriage of the couple, must be void. If the first marriage continues in full force, there would seem to be no objection to the parties continuing to cohabit as man and wife for such period, if, by any chance, such were their desire; but after the expiration of the six months period it would seem that upon a literal construction of the statute the divorce would take effect and the second marriage having been void the parties would then seem to be guilty of illicit cohabitation.<sup>6</sup>

<sup>2</sup> *McLennan v. McLennan*, 31 Ore. 480, 50 Pac. 802, 38 L. R. A. 863, 65 Am. St. Rep. 835; *Wilson v. Cook*, *supra*; *Lanham v. Lanham*, *supra*.

<sup>3</sup> *Chase v. Chase*, 191 Mass. 166, 77 N. E. 782.

<sup>4</sup> *Thomas v. James* (Okla.), 171 Pac. 855.

<sup>5</sup> Code, 1919, § 5113.

<sup>6</sup> Code, 1919, § 4545.

In view of this possible construction of this section, it would appear desirable that it be amended by specifically excepting the remarriage of the same parties from the application of its provisions.

R. Y. B.

**MARRIED WOMEN—RIGHT OF HUSBAND AND WIFE TO BECOME PARTNERS—EFFECT OF VA. CODE, § 5134.**—The common law rule was that it was impossible for a married woman to form partnerships, since she was disabled, generally, to contract or to engage in trade, and husband and wife were wholly incapacitated to contract with each other.<sup>1</sup> Hence, in order that such a relationship might be established, the right to enter into it must be conferred by constitutional enactment or by statute.

In many States, the common law rule has been changed by statute as to the contractual rights and obligations of married women in respect to their separate estates. Under such a statute, it has been held that husband and wife cannot enter into a contract of partnership as between themselves and thereby render themselves jointly liable as copartners.<sup>2</sup> This ruling has been upheld in many jurisdictions, where statutes do not give married women the contractual rights of a *feme sole*.<sup>3</sup> And it is sometimes so held under statutes apparently allowing her full rights to contract and to engage in business as if *feme sole*.<sup>4</sup>

In *Artman v. Ferguson*, *supra*, Long, J., in delivering the opinion of the court, said:

"It has been held by a great preponderance of authorities, even under the broadest statutes, that a married woman has no capacity to form a partnership with her husband, or in other words, to become a member of a firm in which her husband is a partner, even in those states in which she may embark in another partnership; and though she holds herself out as a partner, and her means give credit to the firm, she is held not liable for the debts, as she cannot, by acts or declarations, remove her own disabilities."

This view is further expounded by Hoar, J., in delivering the opinion of the court in *Lord v. Parker*,<sup>5</sup> in which he said:

"The power to form a copartnership includes the power to create a community of property, with a joint power of disposal, and a mutual liability for the contracts and acts of all the partners. To enter into a partnership in business with

<sup>1</sup> MECHEM, ELEMENTS OF PARTNERSHIP, p. 19.

<sup>2</sup> *Artman v. Ferguson*, 73 Mich. 146, 16 Am. St. Rep. 572.

<sup>3</sup> *Gilkerson-Sloss Commission Co. v. Salinger*, 56 Ark. 294, 35 Am. St. Rep. 105.

<sup>4</sup> *Seattle Board of Trade v. Hayden*, 4 Wash. 263, 16 L. R. A. 530.

<sup>5</sup> 3 Allen (Mass.) 127.